

REMARKS/ARGUMENTS

Claims 1-12 were pending in this application. Claims 1, 3 and 8 were amended. Upon entry of this amendment, claims 1-12 will be pending.

In the Office Action, claims 1-12 were rejected under 35 USC §103(a) as being unpatentable over "*TCP-Like Congestion Control for Layered Multicast Data Transfer*" by Vicisano *et al.* (hereinafter "Vicisano") in view of U.S. Patent No. 6,505,253 to Chiu *et al.* (hereinafter "Chiu").

Independent claim 1 recites, among other features, "logic for reducing the sending rate of at least one of the plurality of layers over time." The Examiner concedes that Vicisano does not explicitly teach this element, but cites portions of Chiu teaching this element.

Vicisano discloses multicasting using a number of layers, where each layer has a different bandwidth (*i.e.*, sending rate (p.997). Receivers can adjust their reception rate according to network conditions by joining or leaving layers (p. 998), which implies that the receiving rate may change. However, the receiving rate does not change over time for a layer. Instead, all that Vicisano suggests is that, over time, a receiver can join and leave layers to reduce (or increase) the receiver's reception rate, in response to loss rates or for any other reason. There is no suggestion that the sending rate of a layer is reduced over time.

Similarly, independent claim 3 recites a step of "reducing the sending rates for each of the layers over time." As discussed above, since Vicisano fails to disclose or suggest reducing a sending rate for a layer over time, it necessarily also fails to disclose or suggest reducing the sending rates for each of the layers over time.

Independent claim 8 includes steps of "reducing a sending rate for a first one of the plurality of dynamic layers over time" and "concurrently with the step of reducing, increasing a sending rate of at least one other of the plurality of dynamic layers." As discussed above, Vicisano does not teach or suggest changing the sending rate of any layer over time, much less the changing of the sending rate of any layer.

Chiu was cited as teaching reducing a sending rate over time as claimed. Chiu in fact shows adjusting for a network rate based on congestion feedback. Notably, the portions of Chiu cited by the Examiner show this. See, for example, col. 9, lines 47-48 ("Upon receipt of an ACK message indicating that packets have been lost"), col. 12, lines 54-55 ("After receipt of a congestion report, the sender reduces its data transmission rate"), col. 22, lines 27-28 ("In reaction to a congestion message"), and col. 24, lines 59-62 ("As a result of receiving congestion feedback information from one or more receivers, the sender attempts to reduce the rate of transmission to accommodate the slow receivers"). Thus, it is clear that the system of Chiu does not reduce "the sending rate . . . over time," but does so in response to congestion feedback.

To further clarify this point, claims 1, 3 and 8 have been amended to recite that a sending rate is reduced independent of receiver feedback, which is clearly not taught or suggested by Chiu.

CONCLUSION

In view of the foregoing, Applicant believes all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

Application No. 09/587,542
Amendment dated April 25, 2005
Response to Office Action Mailed December 21, 2004

PATENT

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,

Date: 5/4/05


Philip H. Albert
Reg. No. 35,819

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111-3834
Tel: 415-576-0200 Fax: 415-576-0300
PHA/jtc

60475860 v1